

Remarks/Arguments

Claims 1-27 were pending in this Application. By this Amendment, claims 19 and 21 are amended, and claims 28-30 are added. Claims 3-6, 8, 10-18 and 22-26 are withdrawn. Applicant hereby requests further examination and reconsideration of the application in view of the following remarks.

Election of Species

The Patent Office asserted that claims 3-6, 8 and 22-26 were not drawn to the elected species and withdrew the claims from consideration. Applicant traverses this action.

The Patent Office argues that the elected species, shown in FIGS. 1 and 2, does not disclose the adjustment mechanism being hydraulic; a winch, cable and pulley mechanism; or a pump and piston. This argument is incorrect. FIGS. 1 and 2 are specifically discussed in the specification from page 4, line 3 through page 6, line 3. In this discussion, the specification discloses that “[t]he instrument stand 10 should also have means for moving the keyboard vertically along the pillar 14. This may be provided by mechanical, hydraulic, or other means . . .” (page 5, lines 2-3), and that “[a]nother mechanism that may be used would be a winch and pulley system . . . (see page 5, line 13 through page 6, line 3). Thus, the discussion of the elected species illustrated in FIGS. 1 and 2 clearly describes that the adjustment mechanism may be hydraulic; a winch, cable and pulley mechanism; a pump and pistons; or the like.

Consequently, Applicant believes that the withdrawal of claims 3-6, 8 and 22-26 from consideration as not be drawn to the elected species is in error. Consideration of claims 3-6, 8 and 22-26 is therefore requested.

Claim Rejections – 35 U.S.C. §§ 102, 103

The Patent Office rejected claims 1, 2, 7 and 19-21 under 35 U.S.C. § 102(b) as being anticipated by Pierce et al., U.S. Patent No. 5,483,903 (Pierce). The Patent Office also rejected claims 9 and 27 under 35 U.S.C. § 103(a) as being unpatentable over Pierce in view of Oliver, U.S. Patent No. 5,937,764. Claims 19 and 21 have been amended to

more particularly claim the invention. Applicant traverses these rejections for at least the following reasons.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, “anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Likewise, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *See also In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970).

Pierce fails to disclose, teach or suggest an “instrument support vertically adjustably mounted on said at least one stand member. . .whereby an instrument may be supported by said instrument support and may be adjusted to a desired height by adjustment of said instrument support without removing the instrument from the instrument support” as recited in claim 1; or an instrument support mounted on the at least one stand member for supporting the musical keyboard instrument. . .wherein the adjustment mechanism moves the instrument support vertically while the musical keyboard instrument is supported by the instrument support for allowing adjustment of the height of the musical keyboard instrument to a desired height without removal of the musical keyboard instrument from the instrument support, as presently recited in claim 19. Instead, Pierce discloses a

top or worksurface 12 is of a platelike construction having a horizontally enlarged planar top surface 18 which functions as a working surface. The worksurface 12, in the illustrated embodiment, has a generally horizontally enlarged rectangular configuration which is defined between generally parallel front and rear edges 21 and 22, respectively, and a pair of generally parallel side edges 23 which extend generally perpendicularly between the front and rear edges.

Pierce, column 3, lines 7-15. Pierce does not disclose that this top or worksurface is capable of supporting any instrument, musical or otherwise, and does not address what happens to the content of the work surface as it is raised or lowered. Thus, nowhere does Pierce disclose that the top or worksurface is suitable for supporting a musical keyboard instrument so that the musical keyboard instrument is supported for allowing adjustment of the height of the musical keyboard instrument to a desired height without removal of the musical keyboard instrument as presently claimed.

Pierce also fails to disclose, teach or suggest “means for moving said instrument support vertically along said length of said at least one stand member” as recited in independent claim 1. Instead, Pierce discloses that the top or worksurface is *fixedly* attached to the legs, which include an upper elongate tubular leg part that is telescoped onto and around a lower elongate leg part which projects upwardly into the upper leg part. Thus, the top or work surface does not “move vertically along” the length of the leg. Consequently, Pierce nowhere discloses an apparatus for moving an instrument support vertically along the length of the at least one stand member as claimed.

Oliver fails to make up for these defects in the Pierce reference, since Oliver, either alone or in combination with Pierce, also fails to teach or suggest an instrument support for supporting a musical keyboard instrument so that the musical keyboard instrument is supported for allowing adjustment of the height of the musical keyboard instrument to a desired height without removal of the musical keyboard instrument from the instrument support, or means for moving an instrument support vertically along the length of the at least one stand member as presently claimed. Instead, Oliver is relied upon for its teaching of a foot pedal operated control. However, Oliver does not teach the use of this control for controlling the operation of an adjustable musical instrument stand.

Consequently, for at least the foregoing reasons, Applicant submits that neither Pierce nor Oliver anticipate or render obvious independent claims 1 and 19 and their associated dependent claims 2, 7, 9, 20-21 and 27. Accordingly, withdrawal of the rejections of claims 1, 2, 7, 9, 19-21 and 27 under 35 U.S.C. §§ 102(b), 103(a) is requested.

New Claims

Support for new claims 28-30 is found in the specification on page 4, line 3 through page 6, line 3 and in FIGS. 1 and 2. No new matter is added.

None of the cited references disclose, teach or suggest that the adjustment mechanism extends between the instrument support and the base member exterior to the at least one support member as presently recited in new dependent claim 28, or that the instrument support comprises a first horizontal member, a second horizontal member and a third horizontal member, the first horizontal member having first and second ends, the second horizontal member extending generally perpendicularly from the first end and the third horizontal member extending generally perpendicularly from the second end, the musical keyboard instrument being supported by the second horizontal member and the third horizontal member, as claimed in new dependent claims 29, both of which depend from claim 19.

Moreover, none of the cited references disclose, teach or suggest an adjustable musical instrument stand for supporting a musical keyboard instrument, comprising a base member; a central pedestal member connected to and extending at least generally vertically from the base member; an instrument support mounted on the central pedestal member so that the instrument support is at least substantially cantilevered over the base member, the instrument support for supporting the musical keyboard instrument; and an adjustment mechanism extending between the base member and the instrument support adjacent to the central pedestal member for moving the instrument support vertically to adjust the height of the instrument support relative to the base member; wherein the adjustment mechanism moves the instrument support vertically while the musical keyboard instrument is supported by the instrument support for allowing adjustment of the height of the musical keyboard instrument to a desired height without removal of the musical keyboard instrument from the instrument support as claimed in new independent claim 30.

Accordingly, it is believed that new claims 28-30 are patentable over the references cited by the Patent Office and the prior art in general. Allowance of claims 28-30 is therefore requested.

CONCLUSION

The application is respectfully submitted to be in condition for allowance of all claims. Accordingly, notification to that effect is earnestly solicited.

Respectfully submitted,
Solid Stand, Inc.

Dated: May 9, 2005

By. 

Kevin E. West
Reg. No. 43,983

Kevin E. West
SUITER • WEST • SWANTZ PC LLO
14301 FNB Parkway, Suite 220
Omaha, NE 68154
(402) 496-0300 Telephone
(402) 496-0333 Facsimile